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UNITED STATES DISTRICT COURT  
DISTRICT OF WYOMING

United States of America,

Plaintiff,

v.

Civil No. 2:07-cv-19-CAB

Jane Joyce Rice; Water Garden, Inc.;  
Perpetual Legacy Corp.; Carte Blanche  
Trust; & Newport Pacific Trust Co.,  
Ltd.;

Defendants.

**UNITED STATES' MOTION FOR ENTRY OF DEFAULT  
JUDGMENT AGAINST DEFENDANT WATER GARDEN, INC.**

The United States, by its undersigned counsel, pursuant to Fed. R. Civ. P.

55(b), hereby moves this Court to enter default judgment against Defendant Water Garden, Inc. ("Water Garden") because it has failed to appear and file a responsive pleading in this action.

### **BACKGROUND**

The United States commenced this action on January 19, 2007, *see* Doc. # 1, and service of process upon Water Garden was completed by publication on June 13, 2007. *See* Docs. # 21 & 32. Consequently, Water Garden was required to appear and/or otherwise plead in this action no later than July 5, 2007. *See* Fed. R. Civ. P. 12(a)(1)(A); Doc. # 32. To date, Water Garden has not filed an answer or otherwise responded to the Complaint, or appeared in any other manner before the Court in this matter. *See generally* Civil Docket for Case # 2:07-cv-19-CAB. The clerk of court entered default against Water Garden on August 13, 2007. *See* Doc. # 38.

### **ARGUMENT**

Fed. R. Civ. P. 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend," the party may be defaulted. Once such a default occurs, a party seeking affirmative relief may move for default judgment. *See* Fed. R. Civ. P. 55(b). The entry of default judgment is committed to the District Court's sound discretion. *See, e.g., Olcott v. Delaware Flood Co.*, 327 F.3d 1115, 1124 (10th Cir. 2003).

Here, the entry of default judgment against Water Garden is justified in light of its failure to appear and plead. The Complaint seeks to reduce to judgment federal income tax assessments made against Defendant Jane Joyce Rice, and to foreclose on her property. Water Garden was named as a defendant solely to satisfy 26 U.S.C. § 7403(b)'s requirement that "[a]ll persons . . . claiming any interest in the property involved in [an action to enforce a tax lien] shall be made parties thereto." Water Garden's potential interest in property involved in this matter arises out of the purported transfer of the principal residence of Defendant Jane Joyce Rice from Defendant Jane Joyce Rice to Water Garden on December 31, 1996, by warranty deed. The real property at issue is located at 9 Pleasant Valley Drive, Sheridan, Wyoming, 82801-9735, and is more particularly described as follows:

Lot 3, Pleasant Valley Subdivision, a subdivision in Sheridan county, Wyoming, as recorded in Book 1 of Plats, Page 204, having a street address of 9 Pleasant Valley Drive, Sheridan, Wyoming, 82801.

As noted in the United States' Motion for Service by Publication, filed on May 7, 2007 (Doc. # 19), Water Garden bears all the hallmarks of a fictitious entity.

Nevertheless, Water Garden was named as a defendant out of an abundance of caution in case it claimed an interest in the principal residence of Defendant Jane Joyce Rice, or any other property described in the Complaint which is the subject of this action. Water Garden has failed to appear or otherwise defend, or to

claim, an interest in any property whatsoever.

### CONCLUSION

Water Garden has failed to make any appearance in this matter to claim or defend any interest in any property whatsoever, despite the fact that the clerk of court has entered default against it. As such, the United States respectfully requests that this Court grant its motion for entry of default judgment against Water Garden.

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Dated: August 30, 2007

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